

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTONIO RICARDO
MONTALBO,

Defendant and Appellant.

B289252

(Los Angeles County
Super. Ct. No. TA143557)

APPEAL from a judgment of the Superior Court of Los Angeles County, Hector E. Gutierrez, Judge. Affirmed.

Erica Gambale, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, and Paul S. Thies, Deputy Attorney General, for Plaintiff and Respondent.

A jury convicted Antonio Ricardo Montalbo (Montalbo) of fleeing a pursuing peace officer's motor vehicle while driving recklessly. The lone issue on appeal is whether the trial court erred in imposing a mandatory minimum restitution fine and court fees at sentencing without first holding a hearing to determine whether Montalbo had the present ability to pay them. Finding no error, we affirm the judgment.

On the evening of February 3, 2017, Los Angeles Police Department officers were on patrol looking for a white vehicle with two occupants suspected of being involved in a shooting. When the officers saw Montalbo and his companion, fitting the general description of the shooting suspects, driving in a white vehicle, they attempted to initiate a traffic stop. Instead of stopping, Montalbo led the officers on a chase for approximately three and a half miles, weaving in and out of traffic, running red lights, driving on the wrong side of the street, and nearly hitting other vehicles before coming to a stop at a DUI checkpoint. The pursuit was captured on the officers' dashcam video.

Montalbo was arrested and charged with one count of fleeing a pursuing peace officer's motor vehicle while driving recklessly in violation of Vehicle Code section 2800.2. Montalbo was tried by a jury and found guilty as charged on March 13, 2018. On March 28, 2018, the trial court sentenced Montalbo to the middle term of two years, imposing a \$300 restitution fine (Pen. Code, § 1202.4), a \$40 court security fee (Pen. Code, § 1465.8), and a \$30 court construction fee (Gov. Code, § 70373). Montalbo timely appealed.

Counsel for Montalbo filed an opening brief and requested the court to conduct an independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436. By letter

dated December 17, 2018, we advised Montalbo that he had 30 days to submit by brief or letter any contentions or argument he wished this court to consider.

Thereafter, we requested counsel for Montalbo and the Attorney General to brief whether the trial court erred by imposing mandatory fine and fees without first holding a hearing to determine whether Montalbo had the present ability to pay them. Counsel for Montalbo, citing *People v. Dueñas* (2019) 30 Cal.App.5th 1157 and *People v. Castellano* (2019) 33 Cal.App.5th 485, argued that the trial court erred by imposing the fine and fees without determining Montalbo's present ability to pay them. However, nothing in the record indicates that Montalbo first made a motion for correction in the trial court as required by Penal Code section 1237.2. Accordingly, as the imposition of the restitution fine and court fees is the sole issue on appeal, we do not have jurisdiction to hear it.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

DHANIDINA, J.

We concur:

EDMON, P. J.

EGERTON, J.